



## POLICE DEPARTMENT

The  
City  
of  
New York

In the Matter of the Disciplinary Proceedings

against : FINAL  
Police Officer Robert Tonry : ORDER  
Tax Registry No. 929262 : OF  
Police Service Area 9/Viper 8 : DISMISSAL

Police Officer Robert Tonry, Tax Registry No. 929262, Shield No. 9798, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2007-1269, 2009-1271 and 2009-1284, as set forth on form P.D. 468-121, dated June 6, 2007, January 27, 2009 and May 20, 2009, respectively. In Disciplinary Case No. 2007-1269, Respondent, having pled Guilty, is found Guilty of Specification No. 3; Respondent is found Guilty of Specifications Nos. 2 and 4, and Guilty in part of Specification No. 1. In Disciplinary Case No. 2009-1271, Respondent, having pled Guilty, is found Guilty of Specification Nos. 1 and 3; and Respondent is found Guilty of Specification No. 2. In Disciplinary Case No. 2009-1284, Respondent, having pled Guilty, is found Guilty of Specification Nos. 1 and 3; and Respondent is found Guilty in part of Specification No. 2.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Robert Tonry from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".  
RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

July 12, 2013

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In the Matter of the Charges and Specifications : Case Nos. 2007-1269,  
2009 1271 & 2009-1284  
- against - :  
Police Officer Robert Tonry :  
Tax Registry No. 929262 :  
Police Service Area 9/Viper 8 :  
-----X-----

At:                   Police Headquarters  
                        One Police Plaza  
                        New York, New York 10038

Before:              Honorable Martin G. Karopkin  
                        Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department:      Christine Maloney, Esq.  
                               Nancy Slater, Esq.  
                               Department Advocate's Office  
                               One Police Plaza  
                               New York, New York 10038

For the Respondent:       Peter Brill, Esq.  
                               Brill Legal Group, P.C.  
                               15 Maiden Lane Suite 1500  
                               New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on February 14, 2013, March 1, 2013, March 4, 2013 and May 20, 2013, charged with the following:

Disciplinary Case No. 2007-1269

1. Said Police Officer Robert Tonry, assigned to the 10<sup>th</sup> Precinct, on or about June 2, 2007, at a location known to this Department, in [REDACTED] County, did intentionally and for no legitimate purpose engage in a course of conduct directed at a specific person and knew or reasonably should have known that such conduct caused material harm to the mental or emotional health of such person, where such conduct consisted of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
NYS Penal Law Section 120.45 (2) – STALKING IN THE FOURTH DEGREE

2. Said Police Officer Robert Tonry, assigned as indicated in Specification #1, on or about June 2, 2007 and the location indicated in Specification #1, with intent to harass, annoy or alarm another person did strike, shove, kick or otherwise subject such other person to physical contact, or attempt or threaten to do the same.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
NYS Penal Law Section 240.26 (1) – HARASSMENT IN THE SECOND DEGREE

3. Said Police Officer Robert Tonry, assigned as indicated in Specification #1, on or about June 2, 2007 and the location indicated in Specification #1, was wrongfully and without just cause absent from his residence without permission of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 – REPORTING SICK

4. Said Police Officer Robert Tonry, assigned as indicated in Specification #1, on or about June 2, 2007 and the location indicated in Specification #1, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: in that said Officer did flee responding [REDACTED] County Police Officers on two separate occasions, while traveling at a high rate of speed, running red lights and passing through stop signs.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

Disciplinary Case No. 2009-1271

1. Said Police Officer Robert Tonry, assigned to Housing Borough Bronx/Queens, while off-duty, on or about January 23, 2009, at a location known to this Department, within the confines of Suffolk County, did wrongfully and without just cause violate an active [REDACTED] County District Court order of protection, docket #03075807.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

NYS Penal Law Section 215.50 CRIMINAL CONTEMPT IN THE SECOND DEGREE

2. Said Police Officer Robert Tonry, assigned to Housing Borough Bronx/Queens, while off-duty, on or about January 23, 2009, at a location known to this Department, within the confines of [REDACTED] County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer drove his vehicle at a high rate of speed towards an individual known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

3. Said Police Officer Robert Tonry, assigned to Housing Borough Bronx/Queens, while off-duty, on or about January 23, 2009, did fail and neglect to promptly notify the Operations Unit that he was involved in a police incident in [REDACTED] County.

P.G. 212-32, Page 1 Note – COMMAND OPERATIONS

Disciplinary Case No. 2009-1284

1. Said Police Officer Robert Tonry, assigned to Housing Bureau Bronx/Queens, on or about May 13, 2009, while off-duty, did wrongfully and without just cause violate an order of protection issued at [REDACTED] County District Court, Order #03075807.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

NYS Penal Law Section 215.51(b) – CRIMINAL CONTEMPT IN THE FIRST DEGREE

2. Said Police Officer Robert Tonry, assigned to Housing Bureau Bronx/Queens, on or about May 13, 2009, while off-duty, with intent to harass, annoy or alarm a specific person, intentionally engaged in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED  
CONDUCT  
NYS Penal Law Section 120.50(3) STALKING IN THE THIRD DEGREE

3. Said Police Officer Robert Tonry, assigned to Housing Bureau Bronx/Queens, on or about May 13, 2009, while off duty, with intent to damage property of another person and having no right to do so nor any reasonable ground to believe that he had such right, he damaged property of another person. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED  
CONDUCT  
NYS Penal Law Section 145.00 – CRIMINAL MISCHIEF IN THE  
FOURTH DEGREE

The Department was represented by Christine Maloney, Esq. and Nancy Slater, Esq., Department Advocate's Office; Respondent was represented by Peter Brill, Esq. Respondent, through his counsel, entered a plea of Not Guilty to Specification Nos. 1, 2 and 4 and a plea of Guilty to Specification No. 3 in Disciplinary Case No. 2007-1269. In Disciplinary Case Nos. 2009-1271 and 2009-1284, he entered a plea of Not Guilty to Specification No. 2 and a plea of Guilty to Specification Nos. 1 and 3. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2007-1269

Respondent, having pled guilty, is found Guilty of Specification No. 3. Respondent is found Guilty of Specification Nos. 2 and 4; and Guilty in part of Specification No. 1.

Disciplinary Case No. 2009-1271

Respondent, having pled Guilty, is found Guilty of Specification Nos. 1 and 3.  
Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2009-1284

Respondent, having pled Guilty, is found Guilty of Specification Nos. 1 and 3.  
Respondent is found Guilty in part of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called John Roy, Sergeant Rachelle Newton, Captain Steven Hellman, Lieutenant John Grodin, and Sergeant Jose Cruz.

John Roy

Roy is a police officer with the [REDACTED] County Police Department, where he has served for 11 years. On June 2 and 3, 2007, he was assigned to patrol in the Port Jefferson and Port Jefferson Station areas. He was working a 2100 hours by 0700 hours tour.

He recalled being in the vicinity of Route 347 and Jayne Boulevard in Port Jefferson Station. He went there because at about 1:20 a.m. he received a call of a male following another male. When he got to the location, a BP gas station, he met the complainant, Person B. Person B told him that he had been out with a female friend, Person A, and they had been at a party on the South Shore. As they left the party they noticed Respondent outside. As they were driving on Sunrise Highway

they had stopped in Bohemia for gas and at that time Respondent had punched Person B.

Person B told Roy that when they left the gas station, they went to Person A's residence in Port Jefferson Station. As he was leaving Person A's residence, Person B saw Respondent's vehicle outside. At that time, Respondent's vehicle left and Person B followed it to Route 347 and Jayne Boulevard where he called 911.

While Roy was still speaking with Person B, another officer, McBride, observed a vehicle like the one that had been described across the street. Person B turned to look at the vehicle and Person B identified Respondent, who was in his vehicle in a parking lot. As McBride approached the vehicle, it sped away westbound on Route 347 at a high rate of speed. McBride gave chase but was not able to catch the vehicle, which was travelling at a high rate of speed and ran several red lights.

After speaking with Person B, Roy said he went to Person A's residence and took a statement from her. Person A described Respondent as her [REDACTED] and told basically the same story as Person B. As he and his partner left Person A's apartment, Roy saw the same vehicle that had sped away from McBride earlier. When he turned his vehicle toward that vehicle, it pulled out and went northbound on Washington Avenue at a high rate of speed and with no lights on, making lefts and rights through the local area, going through stop signs, and eventually coming back south on Washington Avenue to Route 112 where it headed north. Roy said that as they tried to catch up with the driver of the vehicle, the driver proceeded to go into the southbound lane against traffic with no lights on and sped away. They lost him. Roy did, however, obtain a license plate number and a computer check was done. The plate came back to Respondent at [REDACTED]

[REDACTED] New York. Respondent was later arrested for the events of that evening.

On cross-examination, Roy agreed that Respondent was not charged with any traffic infractions or reckless driving. He agreed that the arrest was based upon the allegation of Person A and Person B. He agreed that Respondent was not arrested for anything that was witnessed by members of the [REDACTED] County Police Department. Roy indicated that Person A never said she had made a number of unfounded complaints against Respondent. He did not conduct a computer check to see if there were previous complaints by Person A. He agreed that Person B did not appear to have any physical injury. He did not recall anyone saying anything about an altercation at the location of the party. He agreed that the initial altercation reported occurred at a gas station. He agreed that it was Person B who identified Respondent as being in the car. Roy said that what he meant by a high rate of speed was "above the speed limit," which in that area was 55 mph. He agreed that the vehicle, which was across the street in a parking lot, accelerated to over 55 mph and that this was on Route 347. Roy said that before McBride lost the vehicle, he (McBride) saw the license plate number. Roy saw the same vehicle again that evening when he pulled out of the driveway from the complex onto the road. He said that as the driver of the vehicle noticed he was headed towards him, the vehicle pulled out and went northbound and then made a "bunch" of rights and lefts down residential areas with no lights on through stop signs at a high rate of speed. Roy said he eventually activated his lights and siren. He noted that it was about 2:00 or 3:00 a.m. and there were not a lot of people around. He said he activated the lights and siren just before they reached Route 112 because there was two-way traffic there.

Roy explained that in the complex, he had lost the vehicle but it had come back around. He did not engage in a high speed chase with the vehicle on Route 112. He lost the vehicle for safety reasons as it was going in oncoming traffic. Roy said he held off and then stopped.

After the computer check was done, Roy and his partner went to Respondent's home in [REDACTED] to see if the vehicle would return. They waited there a bit but it did not return so they went to the precinct.

Roy said that shortly after he lost the vehicle he got another call. Person B had again called 911. As he was driving home to Centereach, Person B stated that Respondent's vehicle was following him to his house. Another police unit arrived at the house but the vehicle was not there. Roy explained that when he last saw the vehicle, it was headed in the direction of Person B's house which would have been five minutes away.

Respondent was arrested in the morning. Roy was not there but Respondent came to the precinct at about 9:00 a.m. Roy did not know if Respondent came to the precinct in the same vehicle. Roy did not know if other investigatory steps were taken to determine if Respondent had been driving the vehicle that night.

Sergeant Rachelle Newton

Newton has been with the Department for approximately 15 years. She is currently assigned to the Medical Division. In 2007, she was assigned to the Queens North Investigations Unit. During that year, she received a "call out" regarding Respondent and interviewed Person A and Person B.

Newton recalled that Person A told her that she had been involved in a dispute with a member of this Department, Respondent, and that she had had problems with him over a course of time. She told Newton that she ran into Respondent at a gas station. She had seen Respondent's car and approached the car and asked Respondent why he kept stalking her. Person A said that they had a verbal dispute and then she got back into her car and left. She also said she had been with Person B that night.

Newton also interviewed Person B. He told her that he was at a gas station, got gas and he drove off. Person A was supposed to follow him. He looked and saw that she was not behind him. He pulled over and looked back. He saw that there was another car stopped near her, so he went back. When he got back to the gas station, a person came to the car, opened the door and started punching and kicking him. He later learned the person was Person A's [REDACTED] a police officer—Respondent. (An audio recording and transcript of the interview with Person B were received in evidence as Department's Exhibits [DX] 1A and 1B, respectively. An audio recording and transcript of the interview with Person A were received as DX 2A and 2B, respectively.)

On cross-examination, Newton agreed that the audio tape quality was not that great with missing words and things that could not be picked up. She stated that Person B said that he was punched and kicked. She did not notice Person B later changing his statement, making it less violent.

Newton agreed that Person B had said Respondent had followed him in multiple cars: a black SUV or truck, and a red car. Person A described the car following them as a black truck. Newton agreed that Person A had said that she got out of her vehicle and approached Respondent at the gas station. She was not sure if the physical

altercation between Respondent and Person B occurred at the gas station or at a separate location. She said she believed that according to Person B the physical altercation had taken place at the gas station. Newton agreed that there was no testimony from either Person A or Person B that Respondent left the gas station and that the altercation had taken place down the road.

Newton agreed that Person A had made allegations that Respondent had damaged the property of a number of people but she provided no evidence. Newton agreed that Person A had claimed that Respondent had been stalking her for a while and that he had damaged the property of many other people.

Newton did not know if Person B knew of any other incidents.

Captain Steven Hellman

Hellman is a 19-year member of the Department currently assigned to the Midtown North Precinct. In 2007, he was with the Patrol Borough Manhattan South Investigations Unit. He was the head investigator in Respondent's case and interviewed Respondent. Respondent had been in a dispute with Person A and her boyfriend, Person B. Respondent said that he followed them to a gas station on Long Island and that he slapped Person B in the face. After that, Respondent had said that he continued following them.

On cross examination, Hellman did not recall if Person A had tried to take the keys out of Respondent's ignition. Hellman stated that his notes indicated that he asked Respondent why he had followed them after the gas station and Respondent had said that he did not want to threaten or scare her, he wanted to reconcile.

Hellman said he believed that Respondent showed up at Person A's house afterward and that it was documented in the original investigative log.

*At this point, after some debate about what Respondent said during the interview with Hellman, it was agreed that the tape and transcript of that interview would be received in evidence (DX 3A and 3B).*

Lieutenant John Grodin

Grodin is a 12-and-a-half-year member of the Department. In 2009, he was assigned to the Manhattan South Investigations Unit, where he was an investigator on Respondent's case. Among the things he investigated was an incident on January 23, 2009. He interviewed Person A who told him that she had come home from a night out and was going to her mailbox when she observed a vehicle in her townhouse complex. The vehicle, she said, came at her at a high rate of speed and missed her by inches. She claimed that she recognized Respondent as the driver.

Grodin also investigated an incident that occurred on May 23, 2009. He spoke with Person C. He was not sure but he also may have interviewed Person A.

Person C told Grodin that Person A was at his house and he saw her out. When she left, someone drove by and said to stay the "f" away from her. Additionally two vehicles that were on his private property had their tires slashed. One was his work vehicle and the other was his personal vehicle (an audio recording and transcripts of the Person A interview [DX 4A and 4B] and Person C interview [DX 4C and 4D] were received in evidence).

On cross-examination, Grodin agreed that Person A had said she recognized Respondent's profile. He agreed it was night. He agreed that she said it was a dark car. He had never met Respondent before and when asked, he said he did not see anything unique about Respondent's profile. He agreed that Person C had four tires slashed on two vehicles. He agreed that someone had shouted to stay "the fuck away" from Person A. Grodin did not finish the investigation as he was transferred out.

Sergeant Jose Cruz

Cruz is a 23-year member of the Department who has been with the Manhattan South Investigations Unit for six years. He was assigned to investigate Respondent in either 2009 or 2010. He inherited the case. In the course of his work on the case, he interviewed Person A, Person C, and Respondent. He also visited the two locations where the events allegedly took place.

Cruz said the investigation of the January 23, 2009 incident began with the arrest of Respondent by the [REDACTED] County Police Department. He said with regard to this incident, Person A had told him that she observed a vehicle enter her residential complex and as she went to her mailbox she saw the vehicle circle around the complex. When she was in the street, she said the vehicle came at her at a high rate of speed and she believed the car was going to hit her and she had to jump onto the sidewalk. When the car got near to her, she saw the side of the face and the back of the head, and she believed the driver was Respondent.

Cruz said that at that time there was an order of protection in effect against Respondent and in favor of Person A. He believed that Respondent took a plea in the criminal case.

Cruz said the May 13, 2009 case began with the arrest of Respondent by [REDACTED] County Police. In connection with this matter, he interviewed Person C, Person A and Respondent.

Cruz said he went to Person C's residence where he interviewed Person C and Person A. Person A said that she went to her boyfriend's (Person C's) residence and that Person C parked her car in his backyard because he did not want anyone to see her car. When Person A was about to leave, Person C walked to his backyard and heard what he believed to be air coming out of his tires. He looked between his two vehicles and saw a male, with whom he made eye contact.

Cruz said he believed that the person was Respondent based on what Person A had told him had occurred in the past. Cruz also showed Person C a photo array, and Person C identified Respondent.

Person C further told Cruz that he chased Respondent but abandoned the chase because he was concerned that Respondent might have a weapon.

There was an order of protection in favor of Person A which was in effect at the time. Cruz believed that Respondent took a plea in the criminal case.

On cross-examination, Cruz agreed that Person A had said that Respondent had a history of changing vehicles in his effort to stalk her. He agreed that she even had said Respondent leased vehicles for this purpose, but Cruz acknowledged that he never investigated that. He agreed she had said that on the night of the incident where she had

to move out of the way, Respondent had his license plate taped over. Cruz said his interview regarding the May 13, 2009 event was conducted on July 12, 2011. He did not know how many times Person C had accompanied Person A to court as the complainant in the case against Respondent. He did not know if Person A had shown Person C pictures of Respondent but noted that when he asked Person C if he had ever seen Respondent he had replied, "No." He had not asked if Person A had shown Person C pictures of Respondent. Person C was still romantically involved with Person A, when he was interviewed by Cruz.

#### Respondent's Case

Respondent testified on his own behalf.

#### Respondent

Respondent will have been a member of the Department 12 years in July. He noted that for a significant portion of this time he has been on modified duty status, in total about six years. He has been in a VIPER unit that entire time. Prior to that, he was in the 10 Precinct where he went after completing the Police Academy. He had no disciplinary action prior to that.

Respondent stated that all of these incidents arose out of his relationship with Person A. He has known Person A for 15 years. They first met in 1990 in Suffolk Community College where they both attended school. They were friends for about ten years before they became romantically involved. Respondent became a police officer in 2001 and it was at about that time that they started dating.

Respondent noted that before that, Person A had a lot of bad relationships and he had been there for her as a friend. He said that if she needed financial assistance he was

always there for her. She would always call him out of the blue and he was like a shoulder to cry on. He lent her money which she did not pay back.

Respondent explained that Person A had a boyfriend that she was engaged to and with whom she had a child. He went on to say that she dated a "bunch" of different individuals, one of whom ran up her credit cards. Another one, he explained, had a child with her. He said there was a "big court case" and she had to pay child support, which she is still paying. Respondent explained that she does not have custody but has only visitation rights.

Explaining their relationship, Respondent stated:

After that relationship with the baby's father, I was there more for her in a sense financially, emotionally. As I said it turned into a big court case. And it was a very rocky relationship with her, with him. So I was there more financially, and I also supported her. I was always buying food for the baby at the time. Going back and forth to the court with her. Financial assistance with her attorneys for courts that she couldn't pay for her fees. So in a sense she was almost destitute.

Respondent continued:

The relationship just progressed over a course of time. I felt as though the baby should have a better father sense with just the custodial exchanges. I was always there for the child in a sense. Almost in a sense I stepped up and took responsibility even though its not my child...I was in the process of, as I said, financially assisting her going back and forth to court. Trying to take days off. Borrowing money from my pension fund to assist her with that. Also bought her a car as an engagement present. And we were going to move in and get married after that.

Respondent explained that this was in 2004, 2005. He said they did not get

██████████ Explaining what happened to change that, Respondent stated:

That was during the whole – her whole court case with her ex that was checking up on child support. And I found out later on that if she somehow was incapable of paying child support or unable, then I would have to financially support her and the child. I would not –

didn't want to take on that responsibility of paying for her child support when it was her financial situation.

Respondent further explained that he and Person A had moved in together in 1999 for about two years and that was when she became pregnant with the other individual's baby. In 2004, 2005, they had not been living together and she had called him to get reconnected, "out of the blue." He said that in 2004, they had made plans to move in with each other again. They were going to live at his present address. They were going to settle down, get married and have "a couple of more kids." He said he was going to be financially supportive of her [REDACTED] They were going to move into a house.

Respondent said he paid for everything: the down payment, closing costs, "and pretty much my credit and everything else." He said Person A was not contributing anything. Respondent said, "I almost felt that I was being used as well."

The plans to move in changed, Respondent said, "When she started [REDACTED] when she had to pay child support." He said he did not bring Person A to the closing. Respondent said his attorney advised him not to bring her to the closing and that her name was taken off the title and deed. He noted that she was not happy about that. Respondent said Person A stopped talking to him for a time. This occurred, he said, in January 2005.

Respondent testified that from January 2005 to June 2007, Person A would call him "out of the blue" to try to get [REDACTED] at her residence. He explained that he would function as an impartial witness to the [REDACTED] between the father of the child and her. He stated:

It was more of a rocky relationship after the closing, and that was pretty much it. I just show up for five or ten minutes and go out with her to the laundromat and come back and that was it pretty much.

This went on, Respondent said, for about a year and a half. Prior to the first incident, he said she had basically cut him off completely.

Respondent acknowledged that on June 2, 2007, he had called in sick and was not supposed to be outside his residence. He said he was out driving around, "Literally just randomly driving around." He said he would up in central [REDACTED] County. He said, "I had wound up at a gas station where my [REDACTED] happened to be at the time." Describing the scene, he said:

Basically what it was, was I had seen the car. I tried to speak to her. She became very – after I got out of the vehicle, she became very irate, belligerent, yelling and screaming. I didn't want to cause a scene, so I had left.

Respondent said this occurred at a gas station in what he believed was the Bohemia area. He denied making any threats to her nor did she make any threats to him at that point.

Respondent was asked if the encounter was due to him following Person A to that location or whether it was "simply random." Respondent stated that it was "random." He said the way he knew she was at the gas station was because he recognized the car he had bought for her.

He said that he just wanted to reconcile with Person A, to see if they could work things out. He said she became irate, belligerent, yelling and screaming and he said he just left.

He said Person A did not accuse him of anything at that point. He said he got back into his vehicle and drove away. He said he went approximately a half mile up the road and was trying to get something out of his glove compartment when he heard banging on the car. He said he did not know what it was. He turned and saw a car blocking him at a

45 degree angle with the door open. He looked further and saw Person A banging on the doors, "trying to grab for the door handle."

Respondent said Person A was able to open the door and started to punch him, and she was yelling and screaming. He said she was trying to grab the keys for the car. Respondent said he was able to back away from the vehicle and push Person A out of the way with just his body.

When asked by his attorney what Person A was saying, Respondent replied: "She was very irate. Yelling and screaming everything and anything under the sun she was saying at the time." When asked if it was about the relationship or just calling him names, Respondent replied:

Names. As I said yelling and screaming names. Everything from I blame all the relationships on you from day one. So on and so forth. You're not supporting me financially when you did. You let things fall apart.

Respondent said he got away from Person A by backing away with his size. He said he just started walking back and pushing Person A back a little bit. Respondent said he then saw a vehicle parked "a little bit distant from her." He said he did not know the driver but assumed he was with Person A. Respondent said the driver started yelling and screaming as well. Respondent walked up to the driver essentially to find out what was going on and they exchanged a few words. Respondent said he slapped the person, Person B, to "deescalate" the situation so he could get back in his vehicle and drive off.

Respondent endeavored to explain how slapping someone could deescalate the situation. Respondent said Person B was adamant about getting belligerent so Respondent slapped him with an open hand. He stated that Person B was outside the

car at that time. Respondent agreed with his attorney that his action was to distract the person "from getting aggravated."

Respondent testified that he got back in his vehicle and backed up to avoid the vehicle that had blocked him and he left. He explained that he was able to back up because Person A was no longer in the open door of his vehicle.

Asked if he waited to see where Person A and Person B went, Respondent replied that Person B went back to his house. Respondent stated that he was not paying attention to Person A at that time.

Respondent said he followed Person B back to his house to say he was sorry Person B had gotten caught up in the situation. Respondent said he ultimately did not apologize, explaining: "As I said, I followed him back. I waited a couple of minutes and thought about it and said just leave the situation alone and left."

Respondent said he was driving a black Nissan Pathfinder that night. He said such a car is very common and with that color it was also very common. Respondent agreed he had heard Roy testify that he saw his car evading him on at least one occasion. Respondent testified that that did not occur. Respondent denied running red lights or other traffic control devices to avoid being pulled over by the police.

Respondent testified that he went to where his boat was docked in Merrick, Long Island and he said, "I basically just slept on my boat for the night."

Respondent said he tried to contact his delegate but was not successful. He did not call the Operations Unit or the Internal Affairs Bureau (IAB). He did not call his commanding officer.

The next morning, Respondent's delegate got back to him. The delegate told him that the Suffolk Police Department had notified this Department. He and his delegate went to the 6 Precinct in [REDACTED] County where he was arrested. Respondent said he was charged with stalking and that the charge was ultimately resolved. He said it was resolved in November of 2008 when he pled guilty to Harassment, a violation (DX 5 is a copy of the Certificate of Disposition). There were no penalties, he said, beyond the court costs, but an order of protection was issued.

That order was in favor of Person A and it was a full stay away order. There were no other incidents that year; however, Respondent acknowledged that the incident of January 23, 2009 was within the time period of that order of protection.

Respondent denied having any relationship with Person A between the June 2007 incident and January 23, 2009. Despite this, he said, Person A made numerous complaints to IAB and the Inspections Unit starting, he said, back in 2005.

During the period of 2007 to 2009, Respondent said Person A complained about his having allegedly damaged multiple vehicles and being in places he was not. No disciplinary action resulted from those complaints.

Respondent described what his attorney called the "incidental encounter" with Person A on January 23, 2009, as follows:

I was visiting mutual friends of ours a few doors down. Actually about 20 doors down from her. I haven't seen them in approximately six months to a year. I was visiting him.

Respondent explained that the neighborhood is like a community development, a condo complex with curvy streets between condo buildings. Respondent continued:

After I left visiting this individual, drove out of the complex – there is only one way in and one way out – there was an individual on the

sidewalk. Just drove past the individual at a low rate of speed. Didn't know who the individual was at all. And just went back to my house.

Respondent denied that the person was in the road and said the person was on the sidewalk. He did not notice the person jump back as he drove past. Respondent said he was driving a grey Cobalt Jetta. The Court then asked if this was a Chevy and Respondent said, "Yes." He said the windows were not tinted.

After the visit he was contacted by his lawyer a few hours later. He was told an allegation had been made and he had to go to the 6 Precinct in [REDACTED] County, which he did in the morning. He was arrested on Person A's complaint that he had violated the order of protection. He thought this Department already knew about the matter because the alleged incident had occurred at 9:30 that night and he assumed everyone had been notified. Respondent acknowledged that he did not notify this Department.

Respondent said he resolved this criminal case along with the criminal charges arising out of the May 2009 incident because an offer was made to him by the [REDACTED] County District Attorney.<sup>1</sup>

Respondent testified that there were no further incidents from January to May of 2009. At that time the case was progressing, he said, and he was going to court almost every month. He said Person A never showed up in court and the case was being adjourned and adjourned. Respondent said that on May 13, 2009, he did not have a direct encounter with Person A. He said that she had made the allegation that he had damaged "this individual's property." Explaining the circumstances, Respondent testified:

I was out around the area. She was make – as I stated earlier, she was making numerous complaints, allegations. And she had made another allegation back in April of 2009 that the Police Department had called me asking questions about it. I had referred back to my attorney at the

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<sup>1</sup> The trial transcript incorrectly indicates that it was the Southern District Attorney's office.

time. And my attorney said this has nothing to do with anything. And it was referred to the DA's office at that time.

As I said, I was out and around. I wanted to see if she was also putting people up to make allegations against me. I was out – I was aggravated with her in a sense from making so many allegations over the course of time. Not showing up to court. And I did damage the person's property with two tires. I know it was wrong. And restitution was paid.

Respondent agreed that "this was a person who [he] thought had something to do with Person A." Asked to explain his thoughts, Respondent answered, "She was there a few times." When asked by his attorney where he meant, Respondent explained, "She was at this individual's house a few times. And I had seen them." Respondent acknowledged that he "basically damaged his (Person C's) tires.

Respondent was arrested and charged with criminal mischief and criminal contempt. He paid \$377 in restitution as part of his deal with the District Attorney's office. He said he went back and forth to court until July 2012, when a disposition was entered. As part of the deal, pleas were entered to criminal mischief and two counts of criminal contempt. He said the final disposition would be disorderly conduct and thus he anticipates that all of the charges will be reduced to violations. Respondent said he has every reason to believe that the deal will be completed by July 3, 2013. He agreed that this is his expectation. Respondent has not had any contact with Person A since May 13, 2009, and as far as he is aware no further allegations have been made by her.

Respondent has had no issues, other than financial issues, in the last four years. He said his evaluations were "impeccable" but acknowledged that his evaluations were "threes, average." He has had no command disciplines or other charges. Respondent reiterated that by July 4, 2013, he expects to have only violations on his record. He

expects that an order of protection will be issued but he expects to be allowed to carry his firearm, as far as he knows.

On cross-examination, Respondent agreed that he just happened to be driving around in June 2007 when he first saw Person A at the gas station. He added that he was just out to clear his head. He agreed the first time he saw her was at the gas station, volunteering that he believed it was a Gulf station.

Respondent recalled being interviewed on June 19, 2007, and being apprised of the Patrol Guide sections regarding false statements. He agreed that he answered all the questions truthfully at that time. Respondent was asked if he recalled the following question and answer:

Question: Okay. So now on this date June 2, 2007, you say you followed her and her boyfriend to Bohemia. So you have not had any contact and you followed them to Bohemia. From where did you follow them?

Answer: I spotted her car on the road.

Respondent denied recalling that question and answer. (His attorney stipulated that this was in the transcript.)

Respondent said that when he saw Person A at the gas station he got out of his vehicle and tried to speak to her. Respondent agreed that he had said that Person A had used him. He said he wanted to reconcile with her but when asked why, he said he did not know.

Respondent agreed that he pulled over to get something out of his glove compartment. When asked what it was, he said it was an envelope. When asked if he remembered what was in the envelope, Respondent said, "No."

Respondent agreed that he had testified that he saw a gentleman whom he believed was with Person A. He said he believed this because the vehicle had stopped a little distance from her. He had never seen this man before. Respondent denied having seen him at the gas station with her. He denied seeing him on the road before. Respondent agreed he slapped the man to deescalate the situation. When asked how this would deescalate the situation, Respondent said it was to back himself away from the situation. Respondent denied being mad that night. He agreed that he wanted to get back with Person A. He was then asked if he had seen her with another man and Respondent stated: "At that time I didn't know they were both – they weren't together." When asked if he believed they were not together, he said, "The individuals stopped. I thought they were accompanying each other. I had no idea who this individual was."

Respondent said he went up to the vehicle and had words with "her" to see why "she" was being irate and belligerent. With regard to the male, Respondent said, "I just had a few words with him." He did not recall what words. He said he assumed they were together at that point. Respondent said he wanted to know why Person A was being so irate and belligerent. He did not care if the male was dating her, even though he was trying to reconcile with her that night.

Respondent said that the "gentleman" was outside of his vehicle at the time he hit him. He was then asked if he remembered the following questions and answers from his official Department interview:

Question: And you're in your car?

Answer: Yes.

Question: So he's in a driver's seat of his car?

Answer: Yes.

Respondent stated that he did not recall being asked those questions and giving those answers. (Counsel for Respondent stipulated that this was in the transcript.)

Respondent denied that Person A told him to stop following her. He was asked if he remembered the following questions and answers from his official Department interview:

Question: Did she tell you not to follow her?

Answer: On that day?

Question: Yes.

Answer: She – after smacking my car, yes. She actually opened my door, and she got in my face and said, don't follow me. She was ripping my keys out of the ignition of my car.

Respondent recalled this series of questions and answers but said he did not recall Person A saying that. On questioning by the Court, Respondent clarified that he agreed he said this at the official Department interview but did not recall the event itself at this time.

Respondent agreed that the interview, conducted on June 19, 2007, was closer in time to the incident than the date of his testimony at this trial.

Respondent testified that after the incident he went to speak to the man he slapped, whose name he did not know. Respondent stated that he wanted to apologize for slapping him. He agreed that he had slapped him to deescalate the situation but agreed that he had been wrong.

Respondent agreed that he followed the man to his address but that he did not know where he lived. He said when he got there, he waited a few minutes to think if he should go up and speak to him. Respondent said he decided not to and left.

Respondent agreed that he saw the man get out of his car and therefore he learned his address that night. Respondent stated that he never apologized to him. He said he waited "a few seconds." Then he went to Merrick.

Respondent denied following Person A to her house. Respondent agreed that he knew where Person A lived at that time. He agreed the vehicle he drove that night was registered to him.

Respondent denied being chased by [REDACTED] County Police. He acknowledged hearing Roy testify. He agreed that he was arrested, that an order of protection was issued and that he received that in court. Respondent agreed that the judge asked him if he understood it and he did understand it.

With regard to the January 23, 2009 incident, Respondent agreed that he was in the vicinity of Person A's residence. He agreed he knew where she lived on that date. When asked who the friend was that he was visiting, Respondent answered: "It was a mutual friend of ours." He said this individual was about 20 doors down from Person A's residence. Respondent agreed that he knew he had an order of protection. He said he was driving his current car, a 2006 Chevy Cobalt.

Respondent recalled entering pleas of guilty in front of Judge Bean in [REDACTED] County District Court on July 12, 2012. Respondent agreed that the judge asked him various questions. He recalled the judge asking him about driving his car that night.

When asked if he remembered the judge asking him if he drove a car so close to Person A that it caused her to jump back, Respondent stated, "I remember the question. And I was driving in the complex. And Person A was actually on the sidewalk at that time."

Respondent was asked if he remembered the judge asking him if he drove his vehicle in the vicinity of Person A's residence and Respondent agreed. He recalled being asked if he caused Person A to jump back and he agreed. He also agreed that he remembered telling the judge, "Yes." He agreed that this was while he was under oath. He then added that at the time, he did not know who it was that jumped back.

Respondent said there was an individual on the sidewalk near the mailbox. He said the mailbox is not in front of Person A's house and is a distance, a couple of houses, away.

Respondent acknowledged poking holes in Person C's tires on May 13, 2009 with scissors. He said he was driving around and that is how he came to be at Person C's residence. He added that he did not know it was Person C's residence. He learned that after the fact.

When asked why he was driving around in the area that night with scissors, Respondent answered: "To basically get back at Person A for making so many allegations. I was angry." He said he was going to get back at her by damaging another person's property and he was sorry for that. Respondent said he did not know where Person A was going to be and that he was just driving around. He agreed that it was his testimony that Person A just happened to be at some man's house in the area that he was driving in. Respondent said he knew she was there when he had seen her vehicle. He denied seeing her vehicle because he was looking for it. He denied following her there on a number of occasions.

Respondent agreed that it was his plan to get back at Person A for making allegations against him by slashing someone else's tires. He knew there was an order of protection outstanding; that was the same order that had been issued to him by the judge.

Respondent agreed that at one point he was going to marry Person A and have children with her. He denied being angry at Person A but said he was upset about the break up. Respondent acknowledged he was angry about the allegations.

On re-direct examination, Respondent was asked by his attorney to review the transcript of his official Department interview relative to where Person B was when Respondent slapped him. Respondent reviewed the transcript and said that it indicated that Person B was in the driver's seat when he slapped him. Whereupon the following questions and answers were given:

Deputy Commissioner: Just clarify. He was in the driver's seat of his vehicle when you slapped him? Is that what you are saying?

Respondent: That's what the GO (official Department interview) said.

Deputy Commissioner: Forget about the GO. Is that what you're telling us now?

Respondent: Yes.

Respondent testified that he was never charged with traffic infractions with regard to the June 19, 2007 incident. Nor was he charged with reckless driving or obstructing governmental administration or fleeing the police. Respondent also testified that the vehicle he drove on that day was the same as the vehicle he drove to the police station on June 20, 2007.<sup>2</sup>

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<sup>2</sup> The dates herein are as in the transcript. Counsel later acknowledged that he meant June 2 and 3, 2007 as the dates of the incident and June 3, 2007 as the date of the surrender.

FINDINGS AND ANALYSISThe Criminal Cases

On July 12, 2012, Respondent appeared before the Honorable Toni A. Bean in the District Court of the State of New York in and for [REDACTED] County in [REDACTED], New York. Respondent was a criminal defendant on several dockets before that court relating to some of the specifications in this case. He pled guilty to two counts of Criminal Contempt and one count of Criminal Mischief. He was sentenced to what was described as Interim Probation. The understanding was that if Respondent complied with all the directives of his probation officer, the court would allow Respondent to return the cases to the calendar on July 3, 2013. At that time it was agreed that Respondent would be permitted to withdraw his misdemeanor pleas and substitute pleas to violations and that he would be re-sentenced to a conditional discharge. Respondent also agreed to waive sealing of the violation convictions. The full transcript of that court appearance is in evidence (DX 6).

During his testimony, Respondent stated that his original arrest on June 3, 2007 on charges of Stalking was resolved with a plea of guilty to the violation of Harassment in November 2008 (DX 5).

Disciplinary Case No. 2007-1269

The four specifications in this case deal with the alleged incidents that occurred on the night and early morning hours of June 2 to June 3, 2007. Respondent pled guilty to Specification No. 3 in which he admitted to improperly being out of residence while sick. Indeed, in his testimony about this date, Respondent said he was randomly driving

around late in the evening and by pure chance he happened to see his [REDACTED], Person A, at a gas station. He went over to her to try to reconcile with her.

Specification No. 1 involves a claim that Respondent was stalking Person A. Respondent is also charged with stalking Person A under Disciplinary Case No. 2009-1284, which deals with conduct that allegedly occurred on May 13, 2009. To better understand and analyze these stalking charges, I am deferring discussion of these specifications until the other charges have been addressed.

Specification No. 2 alleges that Respondent, on the evening of June 2, 2007, with intent to harass, annoy or alarm another person, did strike, shove, kick or otherwise subject such other person, in this instance, Person B, to physical contact, thereby committing the offense of Harassment.

Respondent has not entered a plea of guilty to this specification but in his testimony he indicated that on the night in question, he encountered Person B and that he indeed did slap him. His testimony was that he did not do this to harass, annoy or alarm Person B, but to "distract him from getting aggravated" and to keep Person B from escalating the situation.

Respondent explained how the encounter came about. After approaching Person A at the gas station, Respondent said Person A "became very irate, belligerent, yelling and screaming." Respondent said he left. Respondent testified that he drove about half a mile up the road, and then he pulled over to get something out of his glove compartment. (On cross-examination, Respondent could only say that what he was trying to get was an envelope but could not say what was in that envelope. In his official

Department interview [DX 3A and 3B], he said that he was looking for something in the back of his truck.)

Respondent said that Person A drove up and blocked him in. She then got out of her car, came over to his and was banging on the car and “trying to grab for the door handle.” He said she managed to get the door open and then proceeded to punch him while she was “yelling and screaming.” He further claimed that Person A was trying to grab for the keys to the vehicle.

Respondent said that, using his body to push Person A back a bit, he was able to back away from the vehicle. Respondent explained what he said happened next:

After that I had seen a vehicle parked a little bit distance from her. I did not know who that individual was at the time. I had figured that he was with her because he had stopped. So I go up to the vehicle to try to see if he knew her. He had known her. He starts yelling and screaming at me as well. And the only reason I started walking up to him to see what her issue was or why she was being so irate. So after that there were a few words exchanged between him and me. And then at that time I had almost in a sense slapped him to deescalate the situation. So I could get back to my vehicle and go and drive away.

When asked by his attorney how slapping someone would deescalate the situation, Respondent stated:

He was adamant that he was getting very belligerent. Yelling and screaming. And just to step – move the situation from him getting irate and everything and yelling. I slapped him with an open hand. And he was outside of the vehicle at the time. And to back myself away from the situation, I walked back to my vehicle.

I have quoted Respondent’s direct testimony on this issue because it puts his argument in the best possible light. The problem is that it makes no sense at all. First of all, Respondent tells us that he approached Person B. He did not, at any point, suggest that Person B approached him.

Further, slapping someone in the face is not ordinarily something that would deescalate a situation. On the contrary, it escalates a verbal confrontation into a physical confrontation. It is also an act of physical violence and intimidation in and of itself. And this is even before considering cross-examination.

The cross-examination of Respondent on this issue was significant in that Respondent had to acknowledge a prior inconsistent statement he made at his official Department interview. During that discussion of the incident, conducted roughly two weeks after the occurrence, Respondent described Person B as having been seated in the driver's seat of his vehicle when he was slapped.

Respondent acknowledged that he was able to walk back to his car and leave. There is no apparent reason why he could not have done so without slapping Person B. Based on Respondent's own testimony, Respondent is found Guilty of Specification No.

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Specification No. 4 alleges that Respondent on two separate occasions fled from responding [REDACTED] County police officers while travelling at a high rate of speed, running red lights and passing through stop signs. Respondent denies this ever happened. He notes that there are other cars like his on the highways and essentially that the officers who said he did this are mistaken or lying.

In the first incident where this allegedly occurred, Roy responded to a 911 call placed by Person B. While speaking with Person B, another [REDACTED] police officer, McBride, saw the vehicle that had been described over the radio. Person B turned and pointed out Respondent seated in that vehicle across the street from the gas station where

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<sup>3</sup> In his interview, Person B said his car door was opened and that he was punched and kicked (DX 1A and 1B).

they were. McBride drove towards the parking lot where Respondent was alleged to be. As McBride approached the vehicle it took off at a high rate of speed. Roy said he observed this himself, explaining that by "high rate of speed" he meant exceeding the speed limit, which was 55 mph on the road in question.

The rest of the chase was described with hearsay testimony. Roy testified to what McBride told him, which included allegations that Respondent drove through red lights and at a high rate of speed.

There seems to be no question that neither Roy nor McBride was able to identify Respondent as the driver of the vehicle based on their visual observations, but there is substantial evidence that Respondent was driving the vehicle which had been observed by Roy and McBride.

First of all, Respondent acknowledged that he was in the vicinity of Roy, Person A and Person B at roughly that time, in that he stated that he was present and in contact with Person A and then with Person B. Secondly, McBride was able to obtain a license plate number of the vehicle he was chasing, which came back to Respondent. Indeed, as a result, the officers were able to ascertain where Respondent lived and later they went to his home looking for him. There was also the identification of Respondent as being in the vehicle when it was pointed out by Person B, which is, of course, hearsay but hearsay supported by this other evidence.

Additionally, Respondent had a motive to flee. He had just hit Person B and the matter was being reported to the police.

All of this provides significant reason to believe that the vehicle being chased was Respondent's and that he was driving it at the time. The description of Respondent's

driving, in a reckless manner while in flight from a police vehicle, is also sufficiently and satisfactorily established. McBride's hearsay testimony is corroborated by Roy's personal observations. Certainly in this first instance, the Department has met its burden of proof.

The second alleged instance of flight and reckless driving was witnessed by Roy. After interviewing Person B, Roy and his partner went to Person A's house to interview her. As they left Person A's apartment, Roy testified that he observed a vehicle that appeared to be Respondent's. As they approached the vehicle it took off at high speed and went through stop signs and was being driven with its lights off.

Once again there was no direct identification of Respondent as the driver of the vehicle but again the circumstances indicate that it was Respondent. Respondent had been in the vicinity. He had been in contact with Person A that evening and no one else would have had the motive to engage in this kind of furtive and flight-driven behavior. The Department has satisfactorily established this second instance of reckless driving by Respondent, and he is found Guilty of Specification No. 4.

Disciplinary Case No. 2009-1271

The three specifications in this case arise out of an incident that occurred on January 23, 2009. Specification No. 1 involves a violation of an order of protection that had been issued in [REDACTED] County District Court in favor of Person A. Respondent has pled guilty to this specification and also pled guilty to Criminal Contempt in District Court on July 12, 2012.

Specification No. 3 involves a charge that Respondent failed to notify the Operations Unit that he had been involved in a police incident that day. Respondent has pled guilty to this specification.

Respondent is challenging Specification No. 2. This specification alleges that Respondent "drove his vehicle at a high rate of speed towards an individual known to this Department." During his testimony at this trial Respondent denied this charge, claiming that the person, Person A, was on the sidewalk and that he did not notice her. He said that he had gone to the complex where Person A lived to visit a mutual friend. Here is how he described the incident while under oath during this proceeding:

After I left visiting this individual, drove out of the complex – there is only one way in and one way out there was an individual on the sidewalk. Just drove past the individual at a low rate of speed. Didn't know who the individual was at all. And just went back to my house.

When asked if that person was in the road, Respondent said, "No. The person was on the sidewalk." When asked if he noticed the person jump back, Respondent said, "I did not notice, no."

However, the Department has placed in evidence a transcript of Respondent's appearance in Suffolk County District Court on July 12, 2012 (DX 6). On that day, Respondent entered pleas of guilty to a number of acts of criminal conduct including the one that is the subject of this specification.

Respondent was placed under oath and with regard to this event was asked the following question by District Court Judge Toni A. Bean:

And lastly on January 23, 2009, at approximately 9:32 p.m. at [REDACTED] County of [REDACTED] State of New York, did you drive your vehicle in the vicinity of the residence of Person A while she was standing outside? And you did drive the vehicle causing her to jump back to avoid being struck by you, and

this was in violation of an order of protection issued on November 5, 2008, by Judge Cohen for which you received a copy of same on said date and the order directed that you stay away from her?

Respondent replied, "Yes, your honor" and the assistant district attorney stated that the plea was acceptable.

The existence of two sworn statements which contradict each other is *prima facie* evidence of perjury, as one or the other sworn statement is obviously untrue. Certainly, as can be seen from other findings I have made in this case, the credibility of Respondent's testimony in this proceeding is subject to question. The resolution of the criminal matter, with its higher burden of proof, would generally constitute *prima facie* evidence of the facts at issue in this forum.

Respondent would have us believe that he pled guilty to criminal contempt in this instance because he was in Person A's housing complex visiting an unnamed "mutual friend" while he denied even seeing Person A, someone he has known for many years. Considering all of these factors, I accept Respondent's sworn testimony before the District Court judge and reject Respondent's testimony at this trial. Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2009-1284

In this case there are three specifications which deal with events that occurred on May 13, 2009. Specification No. 1 involves a charge that Respondent violated an order of protection. Respondent has pled guilty to this specification and pled guilty to Criminal Contempt in District Court on July 12, 2012 in connection with the same incident.

Specification No. 3 involves a charge that Respondent with "intent to damage property of another person and having no right to do so nor any reasonable ground to believe that he had such right, he damaged property of another person." Respondent pled guilty to this specification and, in connection with the same incident, pled guilty to Criminal Mischief in District Court on July 12, 2012.

The facts related to these two specifications are helpful in analyzing the allegations of stalking.

### Stalking

As I have noted, Specification No. 1 of Disciplinary Case No. 2007-1269 and Specification No. 2 of Disciplinary Case No. 2009-1284 involve charges that Respondent was stalking Person A. Stalking, by its very nature, involves a course of conduct,

Respondent has admitted that on May 13, 2009, he went to the home of a Mr. Person C, a person Respondent acknowledges he did not know. He was at that location because Person A was there. Respondent admitted that he slashed the tires of Person C's vehicles. It would be difficult to imagine a clearer example of stalking.

Respondent had no purpose or reason to be at Person C's home other than the fact that Person A was there. Causing harm to a man who was, in whatever fashion, keeping company with Person A, was obviously intended to affect her life and thereby cause her mental and emotional harm.

It is now also appropriate to look again at the events of June 2, 2007. On that date, Respondent said he approached Person A while she was at a gas station. In his testimony at this trial he described the meeting as serendipitous, that is, he was out

driving to "clear his head" when he just happened to spot Person A and approached her, he said, in the hope of renewing their relationship.

This chance meeting in the middle of [REDACTED] County seems unlikely on its face but there is evidence that the story Respondent told is simply untrue.

First there is the hearsay statement of Person B, testified to by Roy. Roy testified that Person B told him that he and Person A first saw Respondent as they were leaving the party he had taken Person A to. In addition there is Respondent's own earlier statement on this issue. Respondent stated during his official Department interview, conducted on June 19, 2007, that on June 2, 2007, he had spotted Person A and her boyfriend on the road and had followed them to Bohemia, [REDACTED]. While Respondent claimed he did not recall making such a statement, that statement can clearly be heard on the audio of that interview (DX 3A). Indeed, during that interview, Respondent went on to explain that he was following them so that he could talk to Person A to see if they could reconcile.

Consequently, we again have a situation where Respondent has said contradictory things about the same event. While I find Respondent's claim that he just happened to see Person A at a gas station as unlikely as his other claim that he just happened to see her and Person B on the road to Bohemia, part of Respondent's earlier statement that he followed Person B and Person A to Bohemia and then from there to the gas station makes sense and is corroborated by Person B. Consequently, I accept this as what occurred.

Respondent acknowledges, indeed he tells us, that his purpose in going to the gas station late at night and approaching Person A was to try to reignite their relationship.

Whatever the wisdom of such a meeting might be, he also tells us that Person A began yelling at him. At some point during his encounter with Person A, he also tells us that Person A attempted to get the keys to his vehicle. On cross-examination, he also acknowledged that Person A told him in no uncertain terms to stop stalking her.<sup>4</sup> Yet his conduct continued that night.

In this re-examination of the events of June 2, 2007, it should be noted that there is a similarity in the conduct of Respondent in regard to the “other man.” In the May 2009 event, Respondent did something to harm Person C, in that instance slicing the tires on his car. In the June 2007 incident, he slapped or punched Person B.

As I have noted, this type of conduct was obviously intended to have an impact on Person A by sending a clear message to any male who wished to associate with her. Not surprisingly, this type of conduct is specifically covered in the stalking statute, Penal Law Section 120.45, which notes that stalking conduct can be directed at a “third party” with whom the victim is acquainted. Further evidence that Respondent was engaged in conduct intended to harm Person A mentally and emotionally is found in another incident that occurred during June 2 - June 3, 2007.

Roy reported that he received another call from Person B, who said that he saw Respondent following him as he was headed home to Centereach. There is no doubt that Person B was telling the truth as Respondent admits that he followed Person B home. Respondent acknowledged that he did not know Person B prior to that night and did not know where Person B lived until he followed him to his home.

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<sup>4</sup> Respondent was asked by his attorney specifically what Person A said to him, but Respondent omitted this statement in his testimony on direct examination.

Respondent testified at this trial that the reason he followed Person B is because he wanted to apologize to Person B for slapping him. It must be pointed out that this makes no sense as Respondent explained he was wholly justified in his action because it was necessary to deescalate the situation.<sup>5</sup> But additionally, it must be noted that Respondent did not in fact apologize that night. He said that when he got to Person B's house, he waited outside for a few minutes and then left. Respondent said this period of time was to allow him to think about whether he should go up to Person B and speak to him, but once he decided not to, he just drove away.<sup>6</sup>

This conduct is, to put it politely, very troubling. It sounds like conduct designed to intimidate Person B and to guarantee that he stays away from Person A rather than an act motivated by contrition. It is also a confirmation by Respondent, himself, that he was engaged in a course of conduct that is associated with stalking, that is, following people about from place to place.

Here again it must be noted that the target is not just Person B whom Respondent acknowledges he did not know, but Person A as well. Respondent acknowledged that he wanted to re-ignite his relationship with Person A and scaring away what he deemed competition was part of his modus operandi.

It is also worth noting that Respondent acknowledges that he did not go home that night but instead slept on his boat. This explains why officers who went to his house that night were unable to effect an arrest.

If there was any doubt at all that Respondent was engaged in conduct associated with stalking, one need only look at Respondent's testimony on questioning from his own

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<sup>5</sup> During cross-examination, Respondent acknowledged that slapping Person B was wrong.

<sup>6</sup> During his official Department interview, when Respondent was asked why he followed Person B to his house, Respondent replied that he did not know why he did that (DX 3A and 3B).

attorney about the May 13, 2009 encounter in which he violated an order of protection by going to Person C's house, where he knew Person A was located and he committed criminal mischief by slashing tires on Person C's vehicles.

After testifying that he was in the area on May 13, 2009, because he was just "out and around" Respondent stated that Person A had been there "a few times" prior to that and that he had seen Person A at this individual's (Person C's) house a few times. Obviously, Respondent was not in the vicinity of Person C's house on May 13, 2009 by chance; he was there because he knew that Person A visited Person C at that location and he had been there before because Person A, who he was supposed to stay away from, was there.

The overwhelming evidence in this case establishes that Respondent was engaged in conduct associated with stalking on June 2 to June 3, 2007 and May 13, 2009. The next question is whether the proven conduct meets the crimes charged in the specifications.

In Disciplinary Case No. 2007-1269 relating to June 2 – June 3, 2007, the stalking charged under Specification No. 1 involves an alleged violation of Penal Law Section 120.45 (2), Stalking in the Fourth Degree. That section reads as follows:

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct: (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct.

There is no question that Respondent should have been aware that his conduct that night both in relation to Person A and Person B would likely cause mental and emotional harm to Person A, but without Person A's testimony there is no proof that it actually did cause such harm. Further, an element of the statute is that the actor, in this case Respondent, had previously been "clearly informed" to cease the conduct.

There is no question that Respondent was clearly informed to cease stalking Person A. The problem here is that the only evidence we have is that this occurred during and not previous to the incident. Consequently, Respondent is not guilty of violating the Penal Law section of Stalking in the Fourth Degree.

Respondent is, however, also charged with violating the Patrol Guide. In this instance Respondent's conduct was so inappropriate and troubling that it did violate Patrol Guide standards. Therefore, with regard to Specification No. 1 of Disciplinary Case No. 2007-1269, Respondent is found Guilty in part.

In Disciplinary Case No. 2009-1284 dealing with the events of May 13, 2009, under Specification No. 2, Respondent is again charged with stalking, this time under Penal Law Section 120.50 (3), Stalking in the Third Degree. That section reads as follows:

A person is guilty of stalking in the third degree when he or she: (3) with intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family.

While it is true that Respondent had a sharp instrument, what he said were scissors which he used to deflate Person C's tires, there is absolutely no evidence to support a "reasonable fear" by Person A or Person C that they would be subject to physical injury or serious physical injury nor is there any evidence that either one or both of them should have reasonably feared any of the other enumerated crimes. The Department has not provided evidence to establish the crime charged in this specification.

Here again, Respondent is also charged under the specification with a violation of the Patrol Guide's "conduct prejudicial" section. Here again, Respondent's conduct is highly inappropriate and troubling. Further, Respondent's conduct, which did occur after he was told by Person A to stop stalking her, and indeed while she was in possession of a full stay away order of protection against Respondent, contains some of the elements of the crime of stalking. Clearly Respondent's conduct violates the Patrol Guide standards and expectations as to the conduct of a uniformed and armed member of the service. Respondent is found Guilty in part of this specification.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of illegal, improper and frankly reprehensible conduct. What is particularly problematic is that Respondent has no insight into his

behavior. He minimized what he admitted to and denied conduct for which his own testimony provided evidence of guilt.

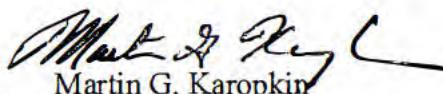
Counsel for Respondent has argued that it is his expectation that in a few months from the trial of this case, Respondent's misdemeanor pleas will be vacated and he will be allowed to plead guilty to offenses which are violations, not crimes. He argues that individuals with misdemeanor convictions have been allowed to remain on the police force.

However, it must be noted that what is at issue here is not whether Respondent was convicted of a crime or a violation; what is at issue is Respondent's conduct and his character. He repeatedly violated an order of protection and he engaged in conduct intended to intimidate Person A, Person B and Person C.

There is simply no way that he can be vested with the power and authority associated with being a police officer, nor, given his lack of judgment, can he be entrusted with a firearm. I therefore recommend that Respondent be DISMISSED from his position with the New York City Police Department.

Respectfully submitted,

**APPROVED**  
SEP 18 2013  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

  
Martin G. Karopkin  
Deputy Commissioner Trials

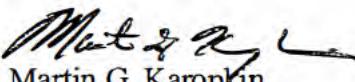
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ROBERT TONRY  
TAX REGISTRY NO. 929262  
DISCIPLINARY CASE NOS. 2007-1269, 2009-1271 & 2009-1284

Respondent has received an overall rating of 3.0 "Competent" on his last three annual performance evaluations.

Since November 2009 he has been on Level III Discipline Monitoring due to poor performance. Respondent has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner – Trials